

MONTANA LEGISLATIVE HISTORY

Chapter 452 1993

Bill H 564 S _____

Original bill & history 1 C

H. Committee on Agriculture

Hearing Date(s) 2/16 1 C

2/18 1 C

_____ C

_____ C

Date Out _____ C

S. Committee on Agriculture

Hearing Date(s) 3/24 1 C

3/24 1 C

_____ C

_____ C

Did this bill originate in an interim committee? _____ Yes 1 No

Committee _____

Report _____

HB 563 INTRODUCED BY SWANSON, ET AL.

ESTABLISH ACCOUNT IN STATE SPECIAL REVENUE FUND INTO WHICH
SUBDIVISION REVIEW FEES MUST BE DEPOSITED

BY REQUEST OF DEPARTMENT OF HEALTH AND ENVIRONMENTAL
SCIENCES

2/10	INTRODUCED		
2/10	REFERRED TO APPROPRIATIONS		
2/10	FIRST READING		
2/10	FISCAL NOTE REQUESTED		
2/16	FISCAL NOTE RECEIVED		
2/17	FISCAL NOTE PRINTED		
3/02	HEARING		
3/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/23	2ND READING PASSED	80	19
3/24	3RD READING PASSED	77	23
	TRANSMITTED TO SENATE		
3/26	FIRST READING		
3/26	REFERRED TO FINANCE & CLAIMS		
4/03	HEARING		
4/05	COMMITTEE REPORT—BILL CONCURRED		
4/06	2ND READING CONCURRED	28	18
4/07	3RD READING CONCURRED	27	22
	RETURNED TO HOUSE		
4/19	SIGNED BY SPEAKER		
4/20	SIGNED BY PRESIDENT		
4/21	TRANSMITTED TO GOVERNOR		
4/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 514		
	EFFECTIVE DATE: 07/01/93		

HB 564 INTRODUCED BY BERGSAGEL

GENERALLY REVISE AGRICULTURE WAREHOUSE, COMMODITY DEALER
AND GRAIN STANDARDS ACT

BY REQUEST OF DEPARTMENT OF AGRICULTURE

2/10	INTRODUCED		
2/10	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/10	FIRST READING		
2/11	FISCAL NOTE REQUESTED		
2/15	FISCAL NOTE RECEIVED		
2/16	HEARING		
2/16	FISCAL NOTE PRINTED		
2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	80	17
2/20	TAKEN FROM ENGROSSING AND REREFERRED TO APPROPRIATIONS		
3/05	COMMITTEE REPORT — BILL PASSED		
3/15	2ND READING PASSED	81	16
3/18	3RD READING PASSED	86	9
	TRANSMITTED TO SENATE		
3/20	FIRST READING		
3/20	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
3/24	HEARING		
3/25	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED	48	0
3/29	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/02	2ND READING AMENDMENTS CONCURRED	81	15

4/05	3RD READING AMENDMENTS CONCURRED	79	20
4/13	SIGNED BY SPEAKER		
4/14	SIGNED BY PRESIDENT		
4/16	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 452		
	EFFECTIVE DATE: 07/01/93		

HB 565 INTRODUCED BY WYATT, ET AL.
 ESTABLISH CHARLES M. RUSSELL TRAIL
 BY REQUEST OF HOUSE HIGHWAYS AND TRANSPORTATION COMMITTEE

2/10	INTRODUCED		
2/10	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/10	FIRST READING		
2/10	FISCAL NOTE REQUESTED		
2/12	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED		
2/15	PLACED ON CONSENT CALENDAR		
2/15	FISCAL NOTE RECEIVED		
2/16	FISCAL NOTE PRINTED		
2/17	3RD READING PASSED	96	3
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO HIGHWAYS & TRANSPORTATION		
3/04	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED	48	0
3/12	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS CONCURRED	95	1
4/02	3RD READING AMENDMENTS CONCURRED	94	4
4/13	SIGNED BY SPEAKER		
4/13	SIGNED BY PRESIDENT		
4/14	TRANSMITTED TO GOVERNOR		
4/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 412		
	EFFECTIVE DATE: 10/01/93		

HB 566 INTRODUCED BY SWANSON
 AUTHORIZE WAIVER OF CERTAIN BOND REQUIREMENTS FOR SCHOOL
 DISTRICT

2/10	INTRODUCED		
2/10	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/10	FIRST READING		
2/12	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED		
2/17	2ND READING PASSED	99	0
2/19	3RD READING PASSED	96	0
	TRANSMITTED TO SENATE		
2/22	FIRST READING		
2/22	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/12	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED		
3/16	2ND READING CONCURRED	50	0
3/17	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		

1 House BILL NO. 564
2 INTRODUCED BY Bourgeois
3 BY REQUEST OF THE DEPARTMENT OF AGRICULTURE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 AGRICULTURAL WAREHOUSE, COMMODITY DEALER, AND GRAIN
7 STANDARDS ACT RELATING TO LICENSE FEES, REVENUE ACCOUNTS,
8 BONDING REQUIREMENTS, AND PASSAGE OF TITLE ON GRAIN SALES;
9 CREATING A COMMODITY DEALER/PUBLIC WAREHOUSE OPERATORS
10 ACCOUNT AND STATUTORILY APPROPRIATING ACCOUNT FUNDS TO THE
11 DEPARTMENT OF AGRICULTURE FOR OPERATION OF THE ACT; AMENDING
12 SECTIONS 17-7-502, 80-4-402, 80-4-422, 80-4-425, 80-4-427,
13 80-4-429, 80-4-503, 80-4-505, 80-4-525, 80-4-527, 80-4-538,
14 80-4-602, 80-4-604, 80-4-608, AND 80-4-612, MCA; AND
15 PROVIDING AN EFFECTIVE DATE."
16

17 STATEMENT OF INTENT

18 A statement of intent is required for this bill because
19 80-4-503 and 80-4-602 grant to the department of agriculture
20 the authority to set license fees outside the statutory
21 scale established in those sections. It is intended that the
22 department, as part of the ongoing administration of the
23 commodity dealer and public warehouse operator program,
24 evaluate the amount of revenue generated by license fees and
25 adjust the fees as necessary within the statutory maximum to

1 ensure proper operation of the program.

2
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 Section 1. Section 80-4-402, MCA, is amended to read:

5 "80-4-402. Definitions. As used in parts 4 through 7 of
6 this chapter, the following definitions apply:

7 (1) "Agent" means any person who contracts for or
8 solicits any agricultural commodities from a producer or
9 warehouseman warehouse operator or negotiates the
10 consignment or purchase of any agricultural commodity on
11 behalf of any commodity dealer.

12 (2) "Agricultural commodity" means any grain, beans,
13 safflower, sunflower seeds, tame mustards, rapeseed,
14 flaxseed, leguminous seed, or other small seed, and other
15 agricultural commodities designated by rule of the
16 department.

17 (3) "Bond" means the bond required to be filed by part
18 5 or 6 of this chapter and includes any equivalent
19 established by department rule, as provided in 80-4-504 and
20 80-4-604.

21 (4) "Commodity dealer" means any person who engages in
22 a business involving or, as part of his the business,
23 participates in buying, exchanging, negotiating, or
24 soliciting the sale, resale, exchange, or transfer of any
25 agricultural commodity in the state of Montana. The term

1 does not include:

2 (a) a person engaged solely in storing, shipping, or
3 handling agricultural commodities for hire;

4 (b) a person who buys agricultural commodities from a
5 licensed commodity dealer;

6 (c) a person who does not purchase more than \$30,000
7 worth of agricultural commodities from producers during a
8 licensing year; however, once a person exceeds the \$30,000
9 exemption, he the person shall obtain a license and is not
10 eligible for the exemption for the succeeding year;

11 (d) a person who is the producer of agricultural
12 commodities that he the person actually plants, nurtures,
13 and harvests; or

14 (e) a person whose trading in agricultural commodities
15 is limited to trading in commodity futures on a recognized
16 futures exchange.

17 (5) "Credit-sale Delayed payment contract" means a
18 written contract for the sale of an agricultural commodity
19 when the sale price is to be paid at a date after delivery
20 of the agricultural commodity to the buyer and includes but
21 is not limited to those contracts commonly referred to as
22 deferred payment contracts, deferred pricing contracts,
23 no-price-established contracts, or price-later contracts. A
24 delayed payment contract does not include those contracts in
25 which the parties intend payment to be made immediately upon

1 determination of weights and grades.

2 (6) "Department" means the department of agriculture
3 provided for in 2-15-3001.

4 (7) "Depositor" means any person who deposits an
5 agricultural commodity in a warehouse for storage,
6 processing, handling, or shipment or who is the owner or
7 legal holder of an outstanding warehouse receipt or who is
8 lawfully entitled to possession of the agricultural
9 commodity.

10 (8) "Director" means the director of the department of
11 agriculture.

12 (9) "Grain" means all grains for which standards have
13 been established under the United States Grain Standards Act
14 (7 U.S.C. 71 through 87) and all other agricultural
15 commodities, such as mustard, oil seed crops, or other crops
16 which may be designated by rule of the department.

17 (10) "Grain Standards Act" means the United States Grain
18 Standards Act (7 U.S.C. 71 through 87).

19 (11) "Inspector" means any person so designated by the
20 director to assist in the administration of parts 4 through
21 6 of this chapter. The term includes warehouse auditors or
22 examiners.

23 (12) "Official grain inspectors" means any official
24 personnel who perform or supervise the performance of
25 official inspection services and certify the results thereof

1 of inspections, including the grade of the grain.

2 (13) "Official grain samplers" or "samplers" means any
3 official personnel who perform or supervise the performance
4 of official sampling services and certify the results
5 thereof of the sampling.

6 (14) "Official grain standards" means the standards of
7 quality and condition of grain that establish the grades
8 defined by the Grain Standards Act.

9 (15) "Official grain weighers" means any official
10 personnel who perform or supervise the performance of class
11 X or class Y weighing services and certify the results
12 thereof, including the weight of the grain.

13 (16) "Person" means any individual, firm, association,
14 corporation, partnership, or any other form of business
15 enterprise.

16 (17) "Producer" means the owner, tenant, or operator of
17 land in this state who has an interest in and receives all
18 or part of the proceeds from the sale of agricultural
19 commodities produced on that land.

20 (18) "Public warehouse" or "warehouse" means any
21 elevator, mill, warehouse, subterminal grain warehouse,
22 public warehouse, or other structure or facility in which,
23 for compensation, agricultural commodities are received for
24 storage, handling, processing, or shipment. The term
25 includes facilities which commingle commodities belonging to

1 different lots of agricultural commodities.

2 (19) "Purchase contract" means a delayed payment
3 contract or other written contract for the purchase of
4 agricultural commodities by a commodity dealer.

5 (20) "Receipt" means a warehouse receipt.

6 ~~(20)~~ (21) "Scale weight ticket" means a load slip or
7 other evidence of delivery, other than a receipt, given to a
8 depositor by a warehouseman warehouse operator licensed
9 under the provisions of part 5 of this chapter upon initial
10 delivery of the agricultural commodity to the warehouse.

11 ~~(21)~~ (22) "Station" means a warehouse located more than 3
12 miles from the central office of the warehouse.

13 ~~(22)~~ (23) "Subterminal warehouse" means any warehouse at
14 which an intermediate function is performed in which
15 agricultural commodities are customarily received from
16 dealers or producers and where the commodities are
17 accumulated prior to shipment.

18 ~~(23)~~ (24) "Terminal grain warehouse" means any warehouse
19 authorized by a grain exchange to receive or disburse grain
20 on consignment as presented by the rules and regulations of
21 a grain exchange.

22 ~~(24)~~ (25) "Warehouseman" "Warehouse operator" means a
23 person operating or controlling a public warehouse.

24 ~~(25)~~ (26) "Warehouse receipt" means every receipt,
25 whether negotiable or nonnegotiable, issued under part 5 of

1 this chapter by a warehouseman warehouse operator, except
2 scale weight tickets."

3 **Section 2.** Section 80-4-422, MCA, is amended to read:

4 "80-4-422. Credit--sale Delayed payment or purchase
5 contracts. (1) A commodity dealer who purchases agricultural
6 commodities by credit-sale purchase contract shall maintain
7 books, records, and other documents as required by the
8 department to establish compliance with the provisions of
9 this section.

10 (2) In addition to other required information, a credit
11 sale purchase contract must contain or provide for all of
12 the following:

- 13 (a) the seller's and purchaser's name and address;
- 14 (b) the conditions of delivery;
- 15 (c) the amount and kind of agricultural commodities
16 delivered;
- 17 (d) the price per unit or basis of value;
- 18 (e) the date payment is to be made; and
- 19 (f) a notice of financial risk involved in the credit
20 sale contract, in a form the department shall adopt pursuant
21 to the rulemaking authority provided in 80-4-403.

22 (3) Title to all agricultural commodities sold by
23 credit--sale purchase contract is in the purchaser as of the
24 time the contract-is-executed agricultural commodities are
25 delivered to and in physical control of the purchaser unless

1 the contract provides otherwise. The contract must be signed
2 by both parties and executed in duplicate. One copy must be
3 retained by the commodity dealer, and one copy must be
4 delivered provided to the seller. Upon revocation,
5 suspension, or termination of a commodity dealer's or
6 warehouseman's warehouse operator's license, the department
7 may advance the payment date for all credit-sale delayed
8 payment contracts to a date not later than 30 days following
9 the effective date of the revocation, suspension, or
10 termination. When not otherwise provided, the purchase price
11 for all agricultural commodities must be determined as of
12 the effective date of revocation, suspension, or termination
13 in accordance with all other provisions of the contract.
14 However, if the business of the commodity dealer is sold to
15 another licensed commodity dealer, credit--sale purchase
16 contracts may be assigned to the purchasing commodity
17 dealer.

18 (4) Any contract that does not satisfy the conditions
19 imposed by this part is considered a sale other than a
20 purchase contract and is subject to the provisions of
21 80-4-608."

22 **Section 3.** Section 80-4-425, MCA, is amended to read:

23 "80-4-425. Action on bond by persons injured --
24 liability of surety -- statute of limitations. (1) All
25 claims against a bond must be made by and through the

1 department. A person injured by the breach of an obligation
 2 for which a bond is given to the department may take--action
 3 against--the--bond-in-his-own-name-to-recover-damages-caused
 4 by-the-breach--The-director-shall-then-make-demand-upon--the
 5 warehouseman--or--the--commodity--dealer--and-his-surety-for
 6 payment-of-damages--if-the-damages-are--not--promptly--paid,
 7 the-director-shall-commence-an-action-on-the-bond-to-enforce
 8 payment--of--damages: file a complaint with the department.
 9 The department shall then investigate the complaint and
 10 determine whether it is valid and whether there are any
 11 other outstanding obligations due. If the department finds
 12 that there are one or more valid obligations, the department
 13 shall make demand upon the warehouse operator or commodity
 14 dealer and the commodity dealer's surety for payment. If the
 15 payment is not made promptly, the department shall commence
 16 an action on the bond to enforce payment. If the department
 17 determines that a complaint is without merit, the department
 18 shall notify the complainant of that determination in
 19 writing. The complainant may then bring a contested case
 20 under Title 2, chapter 4, part 6, to the department for a
 21 determination of whether the department should pursue the
 22 claim against the bond.

23 (2) liability-of-the-surety-upon-the-bond-is-limited-to
 24 the--amount--of-the-bond--However--if If two or more persons
 25 are injured by breach of the obligation for which the bond

1 is given and the damages for violating the conditions of the
 2 bond exceed the specified amount of the bond, the recovery
 3 on the bond shall must be prorated by the surety among all
 4 of those injured.

5 (3) The liability of a surety under a bond extends to
 6 all obligations from commodity dealers' or public warehouse
 7 operators' transactions entered into during the year in
 8 which the bond was in effect, up to the maximum amount of
 9 the bond. Claims must be brought against the bond within 2
 10 succeeding license years."

11 **Section 4.** Section 80-4-427, MCA, is amended to read:

12 "80-4-427. Injunction. If a person without a license is
 13 found to have engaged in any business for which a license is
 14 required under parts 5 and 6 of this chapter, the court
 15 shall enjoin him that person from further business until he
 16 the person has been duly licensed. It is not necessary that
 17 the department show that an individual has been injured by
 18 the actions complained of in order to issue the injunction.
 19 The procedure for injunctive relief is the same as any other
 20 action for an injunction under Title 27. The department may,
 21 in its discretion, file the action in the first judicial
 22 district court. The injunction provided by this section is
 23 an additional remedy to the criminal penalty provided for in
 24 80-4-428."

25 **Section 5.** Section 80-4-429, MCA, is amended to read:

"80-4-429. Penalty. (1) Except as otherwise provided, any person who violates any provision of parts 4 through 6 of this chapter or rules promulgated thereunder under parts 4 through 6 or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director or his-duty an authorized representative in the performance of his a duty under parts 4 through 6 of this chapter is guilty of a misdemeanor and is punishable by imprisonment in a county jail not to exceed 6 months or by a fine of not more than \$1,000, or both.

(2) A person who refuses to permit inspection of licensed premises, books, accounts, records, or other documents required by parts 4 through 7 of this chapter or who uses a scale weight ticket or credit-sale purchase contract that fails to satisfy the requirements of parts 4 through 7 of this chapter is guilty of a misdemeanor.

(3) A person acting as a commodity dealer or warehouseman warehouse operator who knowingly sells warehouse-receipted agricultural commodities that he the person is not authorized to sell or who fails to pay for purchased agricultural commodities is guilty of a felony."

Section 6. Section 80-4-503, MCA, is amended to read:

"80-4-503. Fees of department. (1) The department shall collect an annual warehouseman warehouse operator license fee, based on the number of warehouses owned by the

warehouseman warehouse operator, according to the following schedule:

For each warehouse listed in the application:

<u>Capacity in Hundredweight</u>	<u>Rate</u>
0 to 25,000 <u>125,000</u>	\$ 35 <u>125</u>
25,001-to-50,000	60
50,001-to-125,000	85
125,001-to-250,000	110
250,001 <u>125,001</u> to 375,000	135 <u>300</u>
over 375,000	160 <u>400</u>

(2) ~~The department shall collect a fee of \$50 for each initial licensing inspection of a warehouse or station.~~

(3) ~~The department shall collect a fee of \$25 for each amendment of a license. If, after evaluation of the commodity dealer/public warehouse operator program, the department determines that revenue from license fees is inadequate to accomplish the purposes of this chapter, the department may by rule increase the license fees, but the fee may not exceed \$1,000 for a facility.~~

(4) (3) The department shall collect a fee of \$150 a day or fraction thereof of a day for maintaining an employee of the department at a warehouse to supervise the correction of a deficiency.

(5) (4) All license fees collected under subsection (1) and deficiency fees collected under subsection (3) must be

1 deposited into the state--treasury--and--credited--to--the
2 general--fund commodity dealer/public warehouse operators
3 account."

4 **Section 7.** Section 80-4-505, MCA, is amended to read:

5 "80-4-505. Amount of bond -- cancellation. (1) The
6 amount of the bond to be furnished for each warehouse must
7 be fixed at a rate of 20 cents per hundredweight for the
8 first 500,000 hundredweight of licensed capacity; 15 cents
9 per hundredweight for the next 500,000 hundredweight of
10 licensed capacity; and 10 cents per hundredweight for all
11 licensed capacity over 1 million hundredweight. The amount
12 of the bond may not be less than \$20,000 or more than the
13 maximum prescribed in 80-4-405. The licensed capacity is the
14 maximum number of hundredweight of agricultural commodities
15 that the warehouse can accommodate.

16 (2) If a warehouseman warehouse operator is also
17 operating as a commodity dealer, he the warehouse operator
18 shall also provide a bond as prescribed in 80-4-604.

19 (3) If there occurs a deficiency in net assets as
20 required under 80-4-506, there shall be added to the amount
21 of bond determined in accordance with subsection (1) an
22 amount equal to that deficiency.

23 (4) Each warehouseman warehouse operator bond shall run
24 continuously with the warehouseman license until canceled by
25 the bonding company. ~~The aggregate liability of--the--surety~~

1 ~~may in no event exceed the sum of the bond.~~

2 (5) A 60-day written notice must be given to the
3 department by the bonding company before any bond is
4 canceled; however, such the cancellation does not terminate
5 any liability of the surety incurred prior to the date of
6 cancellation."

7 **Section 8.** Section 80-4-525, MCA, is amended to read:

8 "80-4-525. Scale weight tickets -- form -- issuance.

9 (1) Scale weight tickets must be bound in books of
10 convenient size and must be numbered consecutively. The
11 original scale weight ticket must be delivered to the person
12 from whom the agricultural commodities are received. One
13 carbon copy of each scale weight ticket must remain as a
14 permanent record.

15 (2) A scale weight ticket must be issued for each load
16 of agricultural commodity received by the warehouseman
17 warehouse operator.

18 (3) A scale weight ticket may not be issued or held in
19 lieu of a warehouse receipt. ~~The retention of scale weight~~
20 ~~tickets in lieu of warehouse receipts by the owner of the~~
21 ~~grain is at the owner's risk.~~ However, an agricultural
22 commodity under scale weight ticket is considered warehoused
23 liability, and title remains with the depositor until:

24 (a) the agricultural commodity is sold under a purchase
25 contract;

(b) the agricultural commodity is paid for under 80-4-608; or

(c) a warehouse receipt is issued.

(4) There must be plainly printed across the face of such the scale weight ticket issued by the warehouseman warehouse operator, in bold type, the words "THIS IS NOT A WAREHOUSE RECEIPT. IT MUST BE EXCHANGED FOR A WAREHOUSE RECEIPT IF GRAIN IS HELD IN STORAGE".

(5) All scale weight tickets must be signed by the warehouseman warehouse operator or his the warehouse operator's agent.

(6) All scale weight tickets must be converted into cash or warehouse receipts on demand."

Section 9. Section 80-4-527, MCA, is amended to read:

"80-4-527. Warehouse receipt — issuance — cancellation. (1) A warehouse receipt is a receipt issued by a licensed warehouseman warehouse operator on a form containing all the information required by 80-4-526.

(2) No A warehouse receipt may not be issued except for an agricultural commodity actually delivered to a warehouse for storage.

(3) All warehousemen warehouse operators are required to issue a warehouse receipt for each lot of agricultural commodity received for storage or make payment for the agricultural commodity.

(4) A warehouse receipt that does not in fact represent an agricultural commodity actually delivered into a warehouse for storage and the origin of which cannot be traced to the actual delivery of the grain represented:

(a) is not legal and is of no value;

(b) has no claim on the agricultural commodity stored in a warehouse; and

(c) has no claim on the warehouseman's warehouse operator's bond.

(5) All agricultural commodities in a warehouse belong to the holder of outstanding warehouse receipts except those commodities that are in excess of the total of all outstanding storage obligations. An outstanding warehouse receipt is a warehouse receipt that has not been returned and paid in full on the basis of grade, quality, and quantity by the warehouseman warehouse operator issuing it.

(6) If for convenience the holder of two or more warehouse receipts covering like agricultural commodities wishes to combine them, the new receipt so-issued must state the fact that it was issued in lieu of existing receipts. An assembly or recapitulation statement must be made whenever receipts are so combined, and the number or other identification of the statement must be referenced on the new combined receipt. The assembly sheet must be kept on file in the warehouse office. Each canceled receipt must

1 have stamped across its face "Canceled by No. ___" (showing
2 the number of the new combination receipt).

3 (7) A warehouseman warehouse operator who is a grower
4 and---conducts---such---an---enterprise may receive his the
5 warehouse operator's own grain and issue warehouse receipts
6 for agricultural commodities, in the same manner and without
7 discrimination, as though the warehouse and growing
8 enterprises were of separate ownership. However, the
9 warehouseman warehouse operator shall report to the
10 department all warehouse receipts issued to himself the
11 warehouse operator as a grower.

12 (8) When warehouse receipts are prepared on duplicate
13 or triplicate forms, the original copy is the warehouse
14 receipt and must be given upon request to the person storing
15 the agricultural commodity covered by such the receipt. The
16 other copies shall must have plainly printed across the face
17 the words "duplicate", "triplicate", or "nonnegotiable".

18 (9) Each warehouse receipt issued must show the amount
19 of cash or value of any merchandise the warehouseman
20 warehouse operator has advanced on the agricultural
21 commodity represented by the receipt, but such the notation
22 may not be construed as fixing the date of sale of such the
23 grain.

24 (10) All warehouse receipts must be numbered
25 consecutively as issued by each warehouseman warehouse

1 operator.

2 (11) Warehouse receipts must be issued when storage is
3 charged but no later than 30 days after delivery unless
4 agreed to in writing by both parties.

5 (12) Warehouse receipts must be canceled by drawing a
6 diagonal line and writing "CANCELED" across the face of the
7 original copy of the warehouse receipt. The cancellation
8 date and method of settlement, such as check number or
9 purchase contract number, must also be noted on the face of
10 the original copy of the warehouse receipt. The warehouse
11 receipt holder or the receipt holder's agent shall sign and
12 date the reverse side of the original copy of the warehouse
13 receipt at the time of settlement. If the agricultural
14 commodity is redelivered to the receipt holder, that fact
15 must be noted."

16 **Section 10.** Section 80-4-538, MCA, is amended to read:

17 "80-4-538. Warehouse shortage -- remedies. (1) For
18 purposes of this section, whenever a warehouseman warehouse
19 operator stores agricultural commodities of different kinds,
20 a receipt holder has a claim against all commodities in
21 storage, regardless of their kind, under his the warehouse
22 operator's receipt.

23 (2) Whenever it appears, after an investigation, that a
24 warehouseman warehouse operator does not have in his the
25 warehouse operator's possession sufficient agricultural

commodities to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by him the warehouse operator or when a warehouseman warehouse operator refuses to submit his the warehouse operator's books, papers, or property to lawful inspection, the department may give notice to the warehouseman warehouse operator to comply with the following requirements:

(a) to cover such the shortage;

(b) to give an additional bond as requested by the department; or

(c) to submit to such an inspection as the department considers necessary.

(3) If the warehouseman warehouse operator fails to comply with the terms of such the notice within 24 hours from the date of issuance of the notice or within such a further time as the department may allow, the department may petition the district court of the first judicial district, Lewis and Clark County, or the district court in the county where the licensee's principal place of business is located, as shown by the license application, for an order:

(a) authorizing the department to seize and take possession of any or all agricultural commodities in the warehouse or warehouses owned, operated, or controlled by the warehouseman warehouse operator and of all books,

papers, and property of all kinds used in connection with the conduct or the operation of the warehouse business and any materials that pertain in any way to that business; and

(b) enjoining the warehouseman warehouse operator from interfering with the department in the discharge of its duties as required by this part.

(4) Upon taking possession, the department shall give written notice of its action to the surety on the bond of the warehouseman warehouse operator and may notify the holders of record, as shown by the warehouseman's warehouse operator's record, of all warehouse receipts or scale weight tickets issued for agricultural commodities to present their warehouse receipts or other evidence of deposits for inspection or to account for the same receipts or evidence of deposits. The department may thereupon cause an audit to be made of the affairs of the warehouse, including but not limited to the agricultural commodities of which there is an apparent shortage, to determine the amount of shortage and, if possible, to compute the shortage as to each depositor as shown by the warehouseman's warehouse operator's records. The department shall notify the warehouseman warehouse operator and the surety on his the bond of the amount of the shortage and notify each affected depositor by sending notices to the depositor's last-known address as shown by the records of the warehouseman warehouse operator.

1 (5) The department shall retain possession of the
2 agricultural commodities in the warehouse or warehouses and
3 the books, papers, and property of the warehouseman
4 warehouse operator until such-time-as:

5 (a) the warehouseman warehouse operator or the surety
6 on the bond has satisfied the claims of all holders of
7 warehouse receipts or other evidence of deposits;

8 (b) the surety on the bond has satisfied all such
9 claims pro rata, if the shortage exceeds the amount of the
10 bond; or

11 (c) the department is ordered by the court to surrender
12 possession.

13 (6) If during or after the audit provided for in this
14 section or at any other time the department has evidence
15 that the warehouseman warehouse operator is insolvent or is
16 unable to satisfy the claims of all holders of warehouse
17 receipts or other evidence of deposits, the department may
18 petition the first judicial district court for the
19 appointment of the department to operate or liquidate the
20 business of the warehouse.

21 (7) At any time within 10 days after the department
22 takes possession of any agricultural commodities or the
23 books, papers, or property of any warehouse, the
24 warehouseman warehouse operator may serve notice on the
25 department to appear in the first judicial district court of

1 ~~the county in which the warehouse is located~~, at a time to
2 be fixed by the court, and show cause why the agricultural
3 commodities, books, papers, and other property should not be
4 restored to his the warehouse operator's possession.

5 (8) All necessary expenses incurred by the department
6 in carrying out the provisions of this section may be
7 recovered at the discretion of the department from the
8 assets of the licensee, from the agricultural commodities
9 held by the licensee under warehouse receipt, or in a
10 separate civil action brought by the department in the first
11 judicial district court or recovered at the same time and as
12 part of the seizure action filed under subsection (3)(a).

13 (9) As a part of the expenses so incurred, the
14 department is authorized to include the cost of adequate
15 liability insurance necessary to protect the department, its
16 officers, and others engaged in carrying out this section
17 part.

18 (10) The department shall set by rule the time limits
19 for:

20 (a) notification of its action on the surety bond of a
21 warehouseman warehouse operator;

22 (b) the holders of warehouse receipts or scale weight
23 tickets to provide to the department such evidence of
24 deposit; and

25 (c) satisfaction of the claims of all holders of

1 warehouse receipts or other evidence of deposits."

2 **Section 11.** Section 80-4-602, MCA, is amended to read:

3 "80-4-602. License fees. (1) The department shall
4 collect an annual fee for each commodity dealer license
5 according to the following schedule:

6 <u>Hundredweight</u>	Rate
7 <u>(Previous license year cwt</u>	<u>(per</u>
8 <u>volume or estimated yearly cwt)</u>	<u>facility)</u>
9 0 to 25,000 125,000	\$ 35 125
10 25,001 to 50,000	60
11 50,001 to 125,000	85
12 125,001 to 250,000	110
13 250,001 125,001 to 375,000	135 300
14 over 375,000	160 400

15 (2) ~~Each applicant shall also pay a fee of \$25 for each~~
16 ~~truck operated by it in the operation of its business--as--a~~
17 ~~commodity--dealer. If, after evaluation of the commodity~~
18 ~~dealer/public warehouse operator program, the department~~
19 ~~determines that revenue from license fees is inadequate to~~
20 ~~accomplish the purposes of this chapter, the department may~~
21 ~~by rule increase the license fees, but the fee may not~~
22 ~~exceed \$1,000 for a facility.~~

23 (3) All fees collected under this section must be
24 placed in the general fund commodity dealer/public warehouse
25 operators account."

1 **Section 12.** Section 80-4-604, MCA, is amended to read:

2 "80-4-604. Bonding requirement amounts -- cancellation.

3 (1) An applicant for a license to operate as a commodity
4 dealer shall, before a license may be issued, file with the
5 department a surety bond or its equivalent, as established
6 by department rule, payable to the state. ~~The--aggregate~~
7 ~~liability-of-the-surety-may-not-exceed-the-sum-of-the-bond;~~

8 (2) The bond for a commodity dealer may not exceed 2%
9 of the value of the agricultural commodities purchased by
10 the commodity dealer from the producer during the previous
11 12-month period. The bond for all new applicants is 2% of
12 the estimated value of all agricultural commodities to be
13 purchased during the coming 12-month period. The minimum
14 amount of bond required by any commodity dealer is \$20,000,
15 and the maximum is prescribed in 80-4-405.

16 (3) A surety shall notify the commodity dealer and the
17 department by certified mail at least 60 days prior to the
18 cancellation of the bond. ~~The-liability-of-the-surety-covers~~
19 ~~purchases-made-by-the-commodity-dealer-during-the--time--the~~
20 ~~bond--is--in-force.~~ A commodity dealer's bond filed with the
21 department is continuous until canceled by the surety upon
22 60 days' notice; however, such cancellation does not
23 terminate any liability of the surety incurred prior to the
24 date of cancellation."

25 **Section 13.** Section 80-4-608, MCA, is amended to read:

1 "80-4-608. Payment of purchase price -- definitions.

2 (1) A person required to be licensed as a commodity dealer
3 shall pay 90% of the purchase price to the owner or his the
4 owner's agent for agricultural commodities upon delivery and
5 demand by the owner or agent and the remaining 10% not later
6 than 30 days after delivery by the owner or agent unless
7 otherwise agreed to in writing by the parties. When
8 agricultural commodities are delivered to a commodity
9 dealer, title to the commodities remains with the original
10 owner until a purchase contract has been executed or 90% of
11 the purchase price has been paid to the seller.

12 (2) As used in this section, the following definitions
13 apply:

14 (a) "Delivery" means the transfer by the seller of
15 title to and possession of agricultural commodities to the
16 commodity dealer or to another person in accordance with the
17 agreement between the seller and the commodity dealer.

18 (b) "Payment" means the actual payment or tender of
19 payment of the agreed purchase price by the commodity dealer
20 to the seller."

21 **Section 14.** Section 80-4-612, MCA, is amended to read:

22 "80-4-612. Commodity dealer defaults -- remedies. (1)

23 If the department finds that a commodity dealer has failed
24 to comply with the terms of a written contract or has failed
25 to pay for a commodity purchase under an oral agreement in

1 the manner and within the time provided in 80-4-608, the
2 department may petition the district court of the first
3 judicial district, Lewis and Clark County, for an order
4 authorizing the department to seize and take possession of:

5 (a) any agricultural commodities in the facilities
6 owned, operated, or controlled by the commodity dealer;

7 (b) all books, papers, and property used in connection
8 with the operation of the commodity dealer business; and

9 (c) any material that pertains in any way to that
10 business.

11 (2) If during or after an audit or at any other time
12 the department has evidence that the commodity dealer is
13 insolvent or is unable to satisfy the claims of all
14 commodity dealer creditors covered by the bond, the
15 department may petition the district court of the first
16 judicial district, Lewis and Clark County, for the
17 appointment of the department to operate or liquidate the
18 business of the commodity dealer.

19 (3) All necessary expenses incurred by the department
20 in carrying out the provisions of this part may be recovered
21 at the discretion of the department from:

22 (a) the bond;

23 (b) the assets of the licensee;

24 (c) the agricultural commodities delivered for purchase
25 but not yet paid for; or

(d) in a separate civil action brought by the department in the first judicial district court.

(4) The department is authorized to include as part of the recoverable expenses the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out the provisions of this part."

Section 15. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition --
requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;

15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; [section 17]; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon

death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

NEW SECTION. Section 16. Creation of commodity dealer/public warehouse operators account -- deposit of funds. (1) There is an account in the state special revenue fund. All revenue received under this chapter must be deposited in the account.

(2) Money received as revenue under this chapter that is not immediately required for the purposes of this chapter must be invested under the provisions of the unified investment program established in Title 17, chapter 6, part 2. All earned interest must be deposited in the account.

NEW SECTION. Section 17. Deposit of deficiency funds and liquidation funds. Revenue based on actual expenses received from the liquidation of commodity dealers and public warehouse operators, as authorized in 80-4-538 and 80-4-612, and from deficiency fees, authorized in 80-4-503, must be deposited in the account established in [section 16] and is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of this chapter. Funds deposited under this chapter must be used to pay actual expenses incurred in the liquidation of commodity dealers and public warehouse operators or for the correction of storage deficiencies. Actual expenses include but are not

limited to legal fees, court costs, travel expenses, per diem, and communication.

NEW SECTION. Section 18. Codification instruction. [Sections 16 and 17] are intended to be codified as an integral part of Title 80, chapter 4, and the provisions of Title 80, chapter 4, apply to [sections 16 and 17].

NEW SECTION. Section 19. Code commissioner instruction. Wherever the term "warehouseman" or its equivalent appears in Title 80, chapter 4, parts 4 through 7, or in legislation enacted by the 1993 legislature, the code commissioner shall substitute the term "warehouse operator" or its equivalent and make any necessary grammatical changes to reflect the name change.

NEW SECTION. Section 20. Effective date. [This act] is effective July 1, 1993.

-End-

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By CHAIRMAN VERN KELLER, on February 16, 1993, at 3:00 P.M.

ROLL CALL

Members Present:

Rep. Vern Keller, Chairman (R)
Rep. Joe Barnett, Vice Chairman (R)
Rep. Shiell Anderson (R)
Rep. Bob Bachini (D)
Rep. Jody Bird (D)
Rep. Ervin Davis (D)
Rep. Bill Endy (D)
Rep. Harriet Hayne (R)
Rep. Don Larson (D)
Rep. Gary Mason (R)
Rep. Bill Rehbein (R)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Wilbur Spring (R)
Rep. Wayne Stanford (D)
Rep. Jay Stovall (R)

Members Excused: None

Members Absent: None

Staff Present: Connie Erickson, Legislative Council
Jaelene Racicot, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 564, HB 477, HB 516
Executive Action: HB 213, HB 535, HB 516

HEARING ON HB 564

Opening Statement by Sponsor:

REP. ERNEST BERGSAGEL, HD 17, Malta, stated that HB 564 establishes a fee structure to help operate the commodity dealers licensing program in the Department of Agriculture; 50% of the money will come from the general fund and the other 50% will come

from licensing fees. The bill also contains some clarification language on bonding and grain ownership. He also offered some amendments requested by the Montana Seed Growers' Association.

Proponents' Testimony:

Ralph Peck, Department of Agriculture, presented written testimony. EXHIBIT 1.

Mel Schultz, Montana Grain Elevators Association, presented written testimony. EXHIBIT 2 and 3.

Randy Johnson, Montana Grain Growers Association, stated that the Association supports HB 564. The Association spent several months working on this bill to make it better for producers and the grain elevators. Also, they spent considerable time clarifying when title to grain actually transfers. Mr. Johnson expressed a degree of satisfaction in accomplishing these goals without changing the way the grain trade in Montana operates. He urged the committee to support HB 564 with the amendments.

Ross Grubb, Montana Seed Trade Association, stated that the Association supports the bill as amended. Their concern is SB 98 in which the fees are increased substantially; now, HB 564 has a fee increase as well.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. BIRD asked Mr. Grubb if he was willing to have his fees raised to \$1,000 by the Department of Agriculture. Mr. Grubb said that the amendments addressed this issue. He said the maximum fee was lowered to \$500 instead of the original maximum of \$1,000.

REP. BACHINI asked Ms. Erickson if the amendments address the issue of the fee being lowered to \$500. Ms. Erickson said that the Montana Seed Growers' Association had offered an amendment which set the commodity dealers license fee at \$125.

REP. ROSE asked Mr. Shultz how many small independent elevator operators there are throughout the state of Montana that do not belong to the Association. Mr. Shultz said that they have 50 members and the membership covers 75% of all the grain elevators operating as public warehouses in the state.

REP. ROSE asked Mr. Shultz if there were about 218 licensed commodity dealers in Montana. Mr. Shultz replied that was correct. The commodity dealers of grain elevators, seed dealers, feed lot operators, and truckers who have acquired a commodity dealers license. Of the 218 licensed commodity dealers, 150 are grain elevators and the rest are seed or feed users and truckers.

REP. ROSE asked Mr. Shultz if an independent elevator should pay as much as a General Mills elevator. Mr. Shultz responded yes, they should.

REP. BIRD asked Mr. Shultz how he felt about the possibility of having the fees raised to \$1,000. Mr. Shultz said that would be "disturbing to them" and they would oppose any legislation that would accomplish this fee hike. He said if the Department of Agriculture raises the fees from the Grain Elevator Association's proposal of \$232 a year to \$1,000 a year. That would be an increase of \$100,000 per year for all licensed dealers.

REP. SCHWINDEN suggested the proponents be present for executive action on HB 564.

REP. ROSE asked Mr. Johnson what was the position of the Montana Graingrowers on the graduated license fee. Mr. Johnson stated that they did not oppose the amendment the Montana Grain Elevator Association was offering. He said it was an issue the organization needed to work out themselves.

Closing by Sponsor:

REP. BACHINI closed for REP. BERGSAGEL.

HEARING ON HB 516

Opening Statement by Sponsor:

REP. ROGER DEBRUYCKER, HD 13, Floweree, said that because of the poor financial condition of the state, HB 516 places a fee on the Class 1 milk producers in order to fund milk inspection and dairy research.

Proponents' Testimony:

Tim Huls, Montana Dairymen's Association, stated the Association supports HB 516. Mr. Huls submitted testimony from Keith Nye. EXHIBIT 4. Mr. Huls also submitted written testimony. EXHIBITS 5 AND 6.

Larry Kaufman, a Billings dairy farmer and a member of the Montana Dairymen's Association, stated that the dairy industry is considerably large in Montana. There are 200 dairies in the state, in which 24,000 dairy cows are milked. The average dairy cow in Montana produces 14,000 pounds a year. Annually, Montana dairy farmers generate \$40 million in revenue. The dairy industry generates more dollars to producers than the sheep or swine industry. He urged the committee to pass HB 516.

Cork Mortensen, Executive Secretary to the Board of Livestock, submitted written testimony. EXHIBIT 7.



MARC RACICOT
GOVERNOR

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE

OFFICE OF THE DIRECTOR
AGRICULTURE/LIVESTOCK BLDG.
PO BOX 200201
HELENA, MONTANA 59620-0201

EXHIBIT 1
DATE 2/16/93
HB 564

LEO A. GIACOMETTO
DIRECTOR
(406) 444-3144

FAX (406) 444-5409

FEBRUARY 16, 1993
HOUSE BILL 564
HOUSE AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE
MONTANA DEPARTMENT OF AGRICULTURE
LEO A. GIACOMETTO, DIRECTOR

Chairman Keller and members of the Committee. For the record, I am Ralph Peck, Deputy Director of the Montana Department of Agriculture.

Senate Bill 564 makes needed changes to the grain law resulting from grain company closures, liquidations, and bankruptcies.

The bill proposes to:

- 1) Clarify the liability of bonding companies when issuing grain dealer and warehouse bonds. The statute of limitations on bond payouts is being changed to three years rather than the present eight years, thereby making it easier for Montana grain companies to obtain surety bonds;
- 2) Clarify that only grain grown in Montana is covered by grain dealer bonds;
- 3) Clarify the transfer of title to grain when sold to grain dealers and elevators; and
- 4) make other minor house cleaning changes such as elimination of the \$50 initial licensing fee, \$25 license amendment fee, and the \$25 per truck license fee.

-more-

The bill also establishes a special revenue account in which the program license fees will be deposited. The license fees will fund 50% of the program cost and the General Fund will fund the remaining 50%. The special revenue account will save the General Fund \$66,000 each fiscal year.

The Montana Grain Elevator Association and the Montana Grain Growers Association have worked together in support of an amendment to this bill. The Department supports the amendment which establishes a "Producers lien" on grain sold to grain dealers until such time as the grain has been paid for.

Will Kissinger, Administrator of the Department's Plant Industry Division, and Tim Meloy, Department Attorney are here to answer any technical questions you may have.

Mr. Chairman and members of the Committee, We request that you support and vote for the passage of House Bill 564 as amended.

EXHIBIT B
DATE 2/16/93
HB 564

ONE LEVEL FEE STRUCTURE FOR COMMODITY DEALER AND WAREHOUSE LICENSES.

The State of Montana issues a Commodity Dealers License which authorizes the licensee to buy grain from the Montana producers within specified parameters. One of the parameters is a bond requirement which is based on volume of grain purchased. The greater the volume, the higher the bond requirement. This variable bond requirement appropriately addresses the volume issue and consequently there is no need to have a variable license fee structure.

The same argument applies to warehouse license fees.

EXHIBIT 3
DATE 2/16/93
HB 564

50% FUNDING BY GENERAL FUND AND 50% BY GRAIN ELEVATOR INDUSTRY.

The Agricultural Warehouse, Commodity Dealer and Grain Standard Act is basically a consumer protection law or if you please a producer protection law. It is to protect the farmer from the big grain companies. This law does not extend itself to dealer to dealer trading nor is any license required for these type of transactions nor does it address private grain warehouses, only warehouses which are for public or farmer use. This law takes the producer out of the usual business rules and regulations which fall under the Uniform Commercial Code and puts him in a special category other than a general merchandiser. Hence this law, by the conditions it sets, is a producer protection law. Historically funds used to administer the law came from the Montana State general fund with fees from licenses used to cover costs of license record keeping and printing of license certificates and an occasional, but rare, warehouse inventory audit. This arrangement was reasonable and acceptable to the grain companies. However under the present scenario of user fees and/or self funding it is inordinate for the grain companies to be required, by law, to fund the entire cost of administering the law when the majority of the costs are directly related to the protection and benefit of the Montana grain producer.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By CHAIRMAN VERN KELLER, on February 18, 1993, at 3:00 P.M.

ROLL CALL

Members Present:

Rep. Vern Keller, Chairman (R)
Rep. Joe Barnett, Vice Chairman (R)
Rep. Shiell Anderson (R)
Rep. Bob Bachini (D)
Rep. Jody Bird (D)
Rep. Ervin Davis (D)
Rep. Bill Endy (D)
Rep. Harriet Hayne (R)
Rep. Don Larson (D)
Rep. Gary Mason (R)
Rep. Bill Rehbein (R)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Wilbur Spring (R)
Rep. Wayne Stanford (D)
Rep. Jay Stovall (R)

Members Excused: None

Members Absent: None

Staff Present: Connie Erickson, Legislative Council
Jaelene Racicot, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 648
Executive Action: HB 648, HB 477, HB 564

HEARING ON HB 648

Opening Statement by Sponsor:

REP. ANDERSON, HD 81, Livingston, stated that HB 648 would include alpacas in the livestock laws. REP. ANDERSON added that HB 648 took llamas out of the branding and marking provisions of the livestock law.

Proponents' Testimony:

John Northy, who owns alpacas, stated that alpacas are a cousin to the llama but they are presently not included in the livestock laws. Mr. Northy urged the committee to pass HB 648. EXHIBIT 1.

Cork Mortensen, Department of Livestock, stated that they concur with what Mr. Northy has stated.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. ANDERSON closed.

EXECUTIVE ACTION ON HB 648

Motion/Vote: REP. LARSON MOVED HB 648 DO PASS. The motion carried unanimously.

REP. BACHINI requested HB 648 be placed on the consent calendar. The committee had no objections.

EXECUTIVE ACTION ON HB 564

Motion: REP. MASON MOVED HB 564 DO PASS.

Motion: REP. BACHINI moved to adopt the amendments

Discussion: Ms. Erickson explained the amendments.

REP. BACHINI asked Mr. Peck if the Montana Grain Growers Association and the Montana Grain Elevators Association have been involved with the amendments. Mr. Peck stated that they agreed with the amendments.

REP. BACHINI asked how the \$232 fee was determined. Mr. Peck stated that the Montana Grain Elevators Association passed a resolution at their annual meeting that they would support 50% of the funding of their program through fees. Mr. Peck stated the \$232 was 50% of the funding of their program. Mr. Peck stated that the grain elevators supported a one fee concept.

REP. ROSE stated that he questioned the fairness of the fees. He stated that General Mills could afford to pay the \$232 but the smaller elevators may have a tougher time. Mr. Peck stated that at first there was a tiered fee structure in the bill that was then discussed by the Association. Mr. Peck stated that the Association agreed to go to a \$232 flat fee schedule.

REP. ROSE asked what was the difference, as proposed, between the new fee schedule of a \$232 flat fee and the old fee schedule.

Mr. Kissinger stated that the total cost of the program is \$130,000. This legislation allocates one-half of the program's costs to the general fund and one-half to fees. Both the tiered fee schedule and the flat fee were based on one-half of the programs's costs. Mr. Peck stated that the revenue generated by the tiered fees and the revenue generated by the flat fee were the same.

REP. ROSE asked if there was no difference, why not leave the schedules tiered so the smaller producers would not have to pay so much. Mr. Peck stated that decision was at the committee's discretion.

Motion/Vote: To adopt the amendments on HB 564. The motion carried with REP. STANFORD voting no.

Motion: REP. BACHINI MOVED HB 564 DO PASS AS AMENDED.

Discussion: REP. REHBEIN asked if REP. BERGSAGEL agreed with the amendments. Ms. Erickson and Mr. Kissinger stated that he did agree with the amendments.

REP. BARNETT asked Ms. Langley to comment on another amendment that was proposed by the Seed Trade Association. Ms. Langley stated that they agreed to a fee increase from \$35 to \$100.

Ms. Erickson explained the Langley amendment. Ms. Erickson stated that the amendment would go on page 23, line 15, following subsection two and it would read "The annual license fee for a seed dealer who is licensed under 80-5-202 and sells a majority of the cereal grass and legume seed for the properagation of crops is \$125." Ms. Erickson stated that she had a question about what was meant by majority.

REP. BACHINI asked if this amendment would fit with the amended bill.

REP. BACHINI asked if the Grain Growers Association and the Grain Elevators Association had been involved with the Seed Dealers in drafting this amendment. Ms. Erickson stated she had no idea if they were involved in the process.

Ms. Langley stated that they had been involved. She stated that she worked with all of these groups and they had agreed with the amendment. Ms. Langley said the Grain Elevators Association had been firm on the one fee structure but they had not talked to the seed dealers. Then the two groups sat down and the Grain Elevators Association agreed not to oppose the seed dealer's request for the \$125 fee.

REP. BIRD asked if REP. BERGSAGEL was aware of the amendment and if he approved of the amendment. Ms. Langley stated that REP.

BERGSAGEL was aware of the amendment and that he was concerned with the lien language and not what happened to the fees.

Motion/Vote: HB 564 DO PASS.

Vote: The motion carried unanimously.

EXECUTIVE ACTION ON HB 477

Motion: REP. BACHINI MOVED HB 477 DO PASS for the purpose of discussion.

Discussion: REP. STOVALL stated that all HB 477 does is make it legal for a lay person to float a horse's teeth. REP. STOVALL stated that John Uuker does 700 horses a year. Mr. Uuker was a highly qualified individual to float teeth and he urged the committee to make this practice legal in the state of Montana.

REP. ENDY asked how Mr. Uuker is able to do 700 horses a year illegally and not get arrested or fined for floating teeth.

REP. ROSE stated that he supports HB 477 because a rancher would still have a choice to call a veterinarian or to call a lay person. REP. ROSE added that HB 477 would not hurt the veterinarians.

REP. SPRING stated that he supports HB 477 because he considers floating teeth a part of grooming. REP. SPRING stated that he called a veterinarian in his area, who said he floated teeth on two to three horses a year.

REP. SPRING asked REP. STOVALL if Mr. Uuker used drugs to treat the horses in order to float their teeth. REP. STOVALL stated that Mr. Uuker gives the horses no drugs. If the horse needs medical attention, the horse would be taken to a veterinarian.

REP. BARNETT said he thought there was a need by lay people to float teeth in Montana and he urged the committee to support the bill.

Motion/Vote: HB 477 DO PASS.

Vote: A roll call vote was called. The motion failed 11-5.

EXECUTIVE ACTION ON HB 535

Motion: REP. BARNETT wanted to reconsider the action to table HB 535.

Discussion: REP. REHBEIN stated that he would be in favor of reconsidering the bill if they could amend the bill to allow cash leases.

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By Senator Rea, on March 24, 1993, at 3:12 p.m.

ROLL CALL

Members Present:

Sen. Jack "Doc" Rea, Chair (D)
Sen. Francis Koehnke, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Tom Beck (R)
Sen. Jim Burnett (R)
Sen. Gerry Devlin (R)
Sen. Mike Halligan (D)
Sen. Bob Pipinich (D)

Members Excused: None

Members Absent: Sen. Forrester and Sen. Bruski-Maus

Staff Present: Doug Sternberg, Legislative Council
David Martin, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 564
Executive Action: HB 564

HEARING ON HB 564

Opening Statement by Sponsor:

Rep. Bergsagel, District 17, said HB 564 explains who owns the grain when it is "dumped" in the elevator. HB 564 would also address bonding and raises assessment fees.

Proponents' Testimony:

Leo Giacometto, Department of Agriculture, supported HB 564 (Exhibit #1). He added the Grain Elevator Association had voluntarily tripled their fees to make up more than 50% of the funds for this program which would take pressure off the general fund.

Pam Langley, Montana Grain Elevators Association and Montana Seed Trade Association, supported HB 564. She said a lot of negotiation had occurred to form the language in HB 564. She said the lien language was borrowed from North Dakota. This would address the question of who owned the grain in an elevator in the case of a bankruptcy. The Montana Grain Elevator Association was in strong support of the single piece structure.

Ms. Langley then spoke as a representative of the Montana Seed Dealers Association who also supported HB 564. She said the seed dealers fall under the commodity dealer's license because they purchase some grain from farmers. The seed dealers purchase a much smaller quantity than elevators. Earlier in the session fees for seed dealers increased from a maximum of \$50 to \$300 because they wanted to fund the seed program under the Department of Agriculture. The Seed Association, which is a small association, was not aware at the time of legislation concerning a commodity dealer's license. She handed out information (Exhibit #2). She said the current fee was \$85; with HB 564 and SB 98 this would increase to \$532. The Seed Trader's Association asked the fee be set at \$100 which would match the amount of their other fees. The level of services provided would be the same under both bills.

Randy Johnson, Montana Grain Growers Association, supported HB 564. He said HB 564 clarifies the title for grain transfers. Additional protection would be provided in the case of grain elevator bankruptcies. He said the Grain Growers support the amendment to assess seed dealer's at a lower rate.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

Sen. Koehnke asked if HB 564 would have prevented the Coast Trading fiasco. Leo Giacometto said it might not have prevented that situation. He said HB 564 would give the department more authority to get money back. Mr. Giacometto said the producer would have a priority lien on grain stocks which are still held. In the past this situation was not clear since the grain had already changed hands, and HB 564 would provide authority to get the money for that grain.

Sen. Beck asked if the department could get grain back out of an elevator. Mr. Giacometto said, under present law, once the grain is dumped, the grain had changed hands regardless of whether the producer had received money or not because of the commercial code. He said there was no lien because the lending institution, or bank, had a lien on all chattel and property, and the producer did not have a priority lien on the grain. Mr. Giacometto said when the bond became effective the producer received 20 cents on the dollar. She said HB 564 would provide for a priority lien on the grain for the producers. The bank has the priority lien on

the loan for the property, machinery, etc. The producer would keep the priority lien on the grain or commodities held.

Sen. Aklestad asked, under HB 564, if a scale ticket would qualify the same as a warehouse receipt used to under previous law. Will Kissinger, Department of Agriculture, said the provisions clarifying this was on page 14 and 15, explaining what a scale ticket would do.

Sen. Aklestad asked what would happen when defaults occurred between warehouses, especially small warehouses, and would HB 564 addresses that situation. Mr. Kissinger said no, HB 564 dealt with transactions between the producer and the warehouse. Sen. Aklestad asked if it was possible to address the issue of transactions between warehouses in HB 564. Mr. Kissinger said it would be a major change in concept, and he would not recommend making changes at this particular time. Leo Giacometto said he did not think it was wise to include the small elevator issue in HB 564 either.

Sen. Halligan asked why the private right of action for a person, farmer, or rancher was removed and placed with the department. Mr. Kissinger said previously the producer could go directly to the bonding company. A conflict existed with another provision where the department had the responsibility to prorate any losses on a claim against a bond. If a producer claimed against the bond independently, it could take the whole bond amount when hundreds of other claims might still exist. He said a producer could file a claim with the department, and if a producer felt they were not fairly treated, they could revert to the natural procedure.

Sen. Rea said the Committee should address the set of amendments proposed by Pam Langley and the Montana Grain Growers. Ms. Langley presented the amendments (Exhibit #3) and explained that some elevators also have seed dealer licenses, but the majority of their business involves grain. This amendment would address only seed dealers and would prohibit large elevators from getting a license under the guise of being a seed dealer.

Sen. Aklestad asked if Rep. Bergsagel approved of the amendments. Rep. Bergsagel replied affirmatively.

Closing by Sponsor:

Rep. Bergsagel said HB 564 would provide protection for the farmers who are selling grain to the elevators. He said HB 564 would not address concerns such as Sen. Aklestad's but is a step in the right direction.

Sen. Aklestad said he would carry HB 564.

EXECUTIVE ACTION ON HB 564

Motion/Vote: Sen. Halligan MOVE THE AMENDMENTS (Exhibit #3) TO HB 564. The motion CARRIED UNANIMOUSLY.

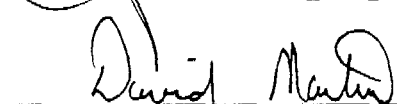
Motion/Vote:

Sen. Aklestad MOVED HB 564 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: Meeting adjourned at 3:37 p.m.


SENATOR REA, Chair


DAVID MARTIN, Secretary

JR/dm